(1)

Single Bench

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR (CHHATTISGARH)

CRIMINAL APPEAL NO. 770/2005

APPELLANTS

IN JAIL

1. Jugam @ Jugal Ram, S/o.Dukhit Ram Verma, Aged about 23 years.

2. Smt. Heera Bai, W/o.Dageshwar Prasad, Aged about 29 years.

3. Smt. Ram Bai, Widow of Dukhit Ram, Aged about 48 years.

All Resident of Damanbod, P.S. Bhatapara-Village, Distt. Raipur (C.G.)

VERSUS

RESPONDENTS

State of Chhattisgarh,
Through P.S. Bhatapara-Village,
District Raipur (C.G.)

APPEAL U/S. 374(2) OF CRIMINAL PROCEDURE CODE

(25) 1

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.770/2005

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

JUGAM @ JUGAL RAM & OTHERS

Vs.

STATE OF CHHATTISGARH

Post for Orders today.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.770/2005

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

JUGAM @ JUGAL RAM & OTHERS

Vs.

STATE OF CHHATTISGARH

PRESENT: -

Shri Ashok Soni, counsel for the appellants.
Shri Sumesh Bajaj, Govt. Advocate for the State.

JUDGMENT

(Delivered on 20 -03-2006)

This appeal is directed against the judgment dated 25-08-2005 delivered by IInd Additional Sessions Judge, Baloda Bazar in Sessions Case No.95/2005 whereby the appellants were convicted under Section-306 read with Section-34 of IPC and were sentenced to undergo rigorous imprisonment for 7 years and fine of Rs.500/- each and in default of payment of fine to undergo additional rigorous imprisonment for 6 months.

2. It is not disputed that the appellant No.3 Smt. Ram Bai is the mother and the appellant No.2 Smt. Heera Bai is the sister-in-law of the appellant No.1.

3. Briefly stated the prosecution story is that Rambati Bai was in love with the appellant No.1 Jugam. Although, she was married to one Bhuwan of Village-Parsada, she left him two days after the marriage and returned to her maternal home. After some time, she started living with the appellant No.1 Jugam as his mistress and gave birth to a daughter. Since, the appellant Jugam had kept Rambati without marrying her, the appellant No.2 & 3 used to harass and instigate her to leave the house. On 31-12-2004, a quarrel ensued between Rambati and the appellant No. 2 & 3 upon brooming of the Courtyard. Fed up, Rambati went along with her 4 year old daughter near the Dawanbod Railway Crossing and committed suicide by jumping with her daughter in front of the running train.

4. The driver of the train reported the matter to the Station Master who in turn sent report Ex.P-7 to the Station House Officer, P.S. Bhatapara Gramin. The autopsy vide Ex.P-10 was conducted by Dr. S.K. Dhagamwar PW-9. Statement of Mahettar PW-1 and Dukalhin Bai PW-2, parents of the deceased under Section-161 of Cr.P.C. were recorded after considerable delay on 31-01-2005. After completion of investigation, the appellants were prosecuted under Section-306 read with Section-34 of the IPC. The appellants abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 11 witnesses. The learned trial Judge relying upon the evidence led by the

prosecution convicted and sentenced the appellants as aforesaid in para-1.

5. Shri Ashok Soni, learned counsel for the appellants has contended that even if the entire evidence led by the prosecution, was taken on its face value, the conviction of the appellants for offences under Section-306 read with Section-34 IPC could not be sustained under law. He referred to the testimony of Dukalhin PW-2, mother of the deceased in para-8 that the deceased had narrated her sufferings about 4 months before her death and prior to that the deceased never informed about her sufferings. It was also stated therein that the deceased and her husband were happily living together and earning their livelihood. It was argued that there is no evidence to show that soon before the death of Rambati, she was instigated by the appellants for the commission of suicide. Lastly, it was contended that death of Rambati was merely an accidental death while crossing the Railway track. The driver of the train who was the best witness to disclose as to whether death of Rambati and her child was accidental or suicidal, was not examined by the prosecution for which an adverse inference ought to have been drawn.

6. On the other hand, Shri Sumesh Bajaj, Govt. Advocate while arguing in support of the impugned judgment referred to para-3 of the testimony of Baliram Verma PW-3, Patel of Village-Dawanbod where he had stated that the appellant

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Jugam had informed him that due to quarrel with the appellant No.2 & 3, Rambati went to Railway track with her daughter and committed suicide. My attention was drawn to para-4 of the testimony of Dukalhin PW-2, mother of the deceased that Rambati used to tell her that relatives of the appellant Jugam used to ask her to get out of the house or else to commit suicide by getting underneath a train or motorcar. It was contended that so far as the appellant No.2 & 3 were concerned, the evidence led by the prosecution established beyond doubt that they instigated and abated the commission of suicide by Rambati.

7. Having considered rival contentions, I have perused the record. The first point which requires consideration is whether death of Rambati was accidental or suicidal. It is true that the driver of the train under which Rambati got killed was the best witness to depose about the manner in which the incident took place. However, spot map Ex.P-6 prepared by Bhagirathi Sahu PW-6 clearly shows that death of Rambati had not occurred while negotiating the Railway Crossing but had occurred at quite a distance therefrom. Besides, the testimony of Baliram Verma PW-3 clearly shows that immediately after the occurrence, the appellant Jugam came to his house and told him that Rambati was killed under the train after a quarrel which ensued with the appellant No.2 & 3. These facts clearly go to show that death of Rambati was not accidental but was suicidal in nature.

8. The only point which now requires consideration is whether the appellants instigated the commission of suicide by Rambati. So far as the appellant No.1 Jugam is concerned, there is absolutely no evidence on record to show that he had, in any manner, instigated or abated the commission of suicide by Rambati. So far as the appellant No.2 & 3 are concerned, the testimony of Mahettar PW-1 & Dukalhin PW-2 needs scrutiny. No report was lodged by them at any point of time that the appellant No.2 & 3 were subjecting their daughter Rambati to harassment and instigating her to commit suicide. Not only this, case diary statements of these two material witnesses were recorded after the expiry of one month i.e. 31-01-2005.

9. In para-12 Mahettar PW-1 has admitted that Rambati was living peacefully and affectionately with the appellant No.1 Jugam for about 5 years, although some quarrel used to take place between the two spouses. In para-2 he stated that the appellant No.2 & 3 were treating Rambati with cruelty but did not give any specific details thereof.

10. Dukalhin PW-2 has also admitted in para-2 that brother of the appellant No.1 and the appellant No. 2 & 3 were living separately since two years prior to the occurrence. Though, she admitted in para-8 that 4 months prior to the date of occurrence Rambati had told her that relatives of Jugam used to ask her to get out of the house or else to get

underneath a train or motorcar, she has not clarified who those relatives were. The statement of Dukalhin PW-2 which was heavily relied on by the learned Govt. Advocate does not show specifically that the appellants No.2 & 3 had asked Rambati to get underneath a train or motorcar. Since, the appellants No.2 & 3 were living separately from appellant No. 1 two years prior to the date of occurrence, it seems highly improbable that on the date of occurrence they would have instigated Rambati to get underneath the train and die. Sohan lal Verma PW-4 has also specifically stated in para-12 that since one year prior to the date of occurrence Rambati was living peacefully with the appellant No.1 and that all the appellants were living separately with their families. In para-13 also he has stated that in the village meeting which took place a year prior to the occurrence he had only heard about some the quarrel. Thereafter, till the date of occurrence he had not heard of any such thing.

11. Abetment has been defined in Section-107 IPC which reads as under:-

Section-107- Abetment of a thing-

"A person abets the doing of a thing, who-

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

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Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing."

12. Section-109, Indian Penal Code reads as under:-

"Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation: An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

It is thus clear that for making a person liable for an offence punishable under Section-306 of the Indian Penal Code, the prosecution has to establish that such person has abetted the commission of suicide. Unless the alleged act of an accused falls under any of the three categories of acts, enumerated in Section-107 of Indian Penal Code, the same would not amount to abetment.

13. It is settled law that for the purposes of sustaining conviction under Section-306 read with Section-34 of IPC, it must be established by the prosecution that the instigation by the appellants, if any, was so directed, correlated and proximate with the Act of suicide that it can be safely inferred that the deceased committed suicide only on account of such instigation. Mere harassment or indecent

behaviour by the family members towards the deceased due to which the deceased abruptly decided to end her life would not constitute the offence under Section-306 of Indian Penal Code. The mere fact that some quarrel used to take place between the deceased and appellant No.1 and that the appellant No. 2 & 3 while quarrelling with the deceased used to ask her to get out the house does not fall under any of the 3 categories enumerated under Section-107 of IPC and would not amount to abatement.

14. The deceased was living peacefully in the house of the appellant No.1 with her child. The appellant No.2 was living separately with her husband who was the brother of the appellant No.1. The appellant No.3 was also living separately with her husband. The evidence led by the prosecution also does not show that soon before the occurrence the appellant No.2 & 3 had subjected the deceased to any such cruelty which would amount to instigating her to commit suicide. There is no doubt that the deceased Rambati and her minor child ended their life in a most tragic manner yet in the absence of any legal or cogent evidence to prove instigation or abatement by the appellants for committing suicide by the deceased, the charge under Section-306 read with Section-34 of IPC could not be established by the prosecution against the appellants.

15. Having thus considered the evidence led by the prosecution in its entirely, I am of the considered opinion that conviction

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of the appellants under Section-306 read with Section-34 of IPC and the sentence awarded thereunder are liable to be set aside.

16. In the result, the appeal is allowed. Conviction of the appellants under Section-306 read with Section-34 of IPC and the sentence awarded thereunder are set aside. The appellants are acquitted and shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded to the appellants.

Sd/-
Dilip Raosaheb Deshmukh
Judge